

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RICHARD CARMICHAEL,
Plaintiff,

v.

WILLIAM RILEY, *et al.*,
Defendants.

Case No. C06-5542 RJB/KLS

ORDER VACATING ORDER
DIRECTING SUBMISSION OF
SERVICE COPIES AND
DIRECTING PLAINTIFF TO
SUBMIT AMENDED
COMPLAINT

On October 19, 2007, the Court directed filing of Plaintiff's Amended Complaint (Dkt. # 53) and directed the Clerk of the Court to send service forms to Plaintiff for the additionally named Defendants named in Plaintiff's Amended Complaint. (Dkt. # 58). Upon further review of Plaintiff's Amended Complaint, the Court finds that its Order Directing Service shall be vacated and Plaintiff directed to either proceed upon his original complaint or submit a proposed Second Amended Complaint within the parameters set forth in the Court's previous Order granting Plaintiff leave to amend. (Dkt. # 42).

In the Order granting Plaintiff leave to amend, Plaintiff was specifically cautioned that he was limited to the claims originally plead in his complaint. (*Id.*). For example, in addition to the claims Plaintiff alleges against Defendant Riley, Plaintiff alleges an Eighth Amendment claim against WDOC officials "to be determined and named upon and through discovery," for deliberate indifference to his health, welfare and safety. (Dkt. # 5, p. 15¹). Plaintiff was granted leave to amend to name only those

¹The Court references CM/ECF numbering of Plaintiff's Complaint.

1 parties “for whom factual allegations exist in the original Complaint.” (Dkt. # 42). The Court noted that
2 Senior Correctional Officer Clark and WDOC officials generally, were already referenced within the
3 body of Plaintiff’s original Complaint. However, Plaintiff has gone beyond the parameters of the Court’s
4 Order by including new causes of action including parties from Nevada state. Plaintiff also improperly
5 included answers to interrogatories which he finds objectionable. (*See e.g.*, Dkt. # 53, p. 11, ¶¶ 36-38).

6 Plaintiff may proceed in this action relying on his original Complaint (Dkt. # 5) or, he may file a
7 second amended complaint, in which he may attempt to specifically name only those new defendants as
8 they relate to the claims already stated in his original complaint, i.e., those John and Jane Doe Defendants
9 and WDOC officials for whom factual allegations already exist within the original complaint. Plaintiff
10 is also reminded that as an amended complaint supersedes the original in its entirety, making the original
11 as if it never existed, Plaintiff will need to rewrite his second amended complaint in its entirety, should he
12 chose to submit one.

13 Accordingly, it is **ORDERED**:

- 14 (1) The Court’s Order directing the Clerk of the Court to file Plaintiff’s Amended Complaint
15 (Dkt. # 53) and directing Plaintiff to fill out forms with addresses for the additionally
16 named defendants in Plaintiff’s Amended Complaint is **VACATED**;
17 (2) Plaintiff is directed to submit a Second Amended Complaint or submit a statement to the
18 Court that he shall be relying on his Original Complaint (Dkt. # 5), on or before **December**
19 **14, 2007**; and
20 (3) The Clerk of the Court shall send a copy of this Order to Plaintiff and to counsel for
21 Defendants.

22 DATED this 6th day of November, 2007.

23
24
25 
26 Karen L. Strombom
27 United States Magistrate Judge
28